

STATE OF MICHIGAN  
COURT OF APPEALS

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CIT GROUP/EQUIPMENT FINANCING, INC.,

Plaintiff-Appellant,

v

JOHN K. ELLIOTT,

Defendant-Appellee.

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UNPUBLISHED

July 19, 2005

No. 260883

Wayne Circuit Court

LC No. 03-324558-CK

Before: O’Connell, P.J., and Schuette and Borrello, JJ.

BORRELLO, J. (*dissenting*).

I dissent from the majority in this case because the trial court correctly stated and applied the rule of law to the facts of this case. The decision of the majority in this case operates as a means for creditors to circumvent the purpose and intent of the UCC’s provisions for giving debtors adequate notice of a sale of their repossessed goods. With their decision, the majority has stripped from debtors their due process right of adequate notice involving the sale of repossessed goods.

In this case, plaintiff contends that it gave adequate notice of the sale. Defendant does not dispute that he received notice of a sale; however, defendant asserts, and plaintiff concedes, that plaintiff’s notice failed to state the time and date of the sale. In *Honor State Bank v Timber Wolf Const Co*, 151 Mich App 681, 683; 391 NW2d 442 (1986), this Court stated: “[A] secured creditor’s failure to give notice of the disposition of collateral, as required by . . . the Uniform Commercial Code,<sup>1</sup> operates as an absolute bar to the recovery of a deficiency judgment.” In that case, we construed MCL 440.9504(3) as it then read, which stated that, but for exceptions not applicable here, “reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor . . .” Despite plaintiff’s arguments to the contrary, the Uniform Commercial Code remains virtually the same. The current version of the statutory language quoted above appears at MCL 440.9613(a)(v), and requires that notice state “the time and place of a public disposition or the time after which any other disposition is to be made.”

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<sup>1</sup> MCL 440.9101 *et seq.*

Plaintiff argues, and presents exhibits to show, that it meticulously followed the form and service requirements for providing notice. Defendant does not dispute the adequacy of form or service, but challenges the substance of the notice provided on the ground that plaintiff did not specify the time or place of the private auction that disposed of the collateral. The trial court agreed, stating from the bench that “[o]ne of the reasons for providing notice of the time and places of sale is . . . so that the guarantor can guard against unreasonable sale or one below market value,” without otherwise identifying any other way in which the notice provided was deficient. I strongly agree with the analysis employed by the trial court. Failure to inform the defendant of the time and place of the auction did not adequately safeguard his rights under MCL 440.9613(a)(v). Additionally, failure to notify the defendant of the time and place of the sale undermines one of the purposes of the reasonable notification requirements as set forth in MCL 440.9613 by not giving the debtor the opportunity to bid at the sale or to encourage others to bid on the property in order to secure a fair price. *Honor State Bank, supra* at 687. Additionally, the statutory scheme is frustrated by the inability of the debtor to bid on the property or to oversee the bidding process to ensure that the maximum price is obtained. See *id.*

For the reasons stated above, I would affirm the decision of the trial court.

/s/ Stephen L. Borrello